in the service until that could be done, the danger was so obvious and imminent as to render the servant liable for contributory negligence. It is well settled that a servant who knowingly undertakes a hazardous work, assumes the risk. *Coal Co. v. Jones,* 127 Ill. 379; *Welton v. Railroad Co.,* 72 Mass. 555. But there is great conflict of decisions as to how far a promise on the part of the master to repair and a request that the servant continue in the employment, will relieve the servant, in case of injury caused by the defect, from a charge of contributory negligence. In *Erdman v. Steel Co.,* 95 Wis. 6, and *Indianapolis & St. L. R. Co., v. Watson,* 114 Ind. 20, it is held that a servant is relieved from all liability, except when he continues in an employment so fraught with perils that a man of ordinary prudence would not undertake it. Other cases hold that a promise to repair shifts all liability upon the master, except when it should be obvious to the employe that to continue the work meant imminent, if not inevitable, injury. *Green v. Railroad Co.,* 31 Minn. 248; *Rothenberg v. N. W. Consol. Mfg. Co.,* 57 Minn. 461; *Dells Lumber Co. v. Erickson,* 25 C. C. A. 397; *Hough v. Railway Co.,* 100 U. S. 213. The justifiability of the servant in remaining in the employment, after a promise to repair, is generally held to be a question for the jury. *Lynch v. Allyn,* 160 Mass. 249; *Smith v. Backus Lumber Co.,* 64 Minn. 447; *Hough v. Railway Co., supra; Woods on Master and Servant,* Secs. 378-381. The same rule is followed in England. *Clark v .Holmes,* 7 H. & N. 937. Thus the decision under consideration, in holding that the case should have been taken from the jury, would seem to rest on doubtful ground.

MASTER AND SERVANT—INJURIES—FELLOW SERVANT.—DONNELLY V. MINING CO., 77 S. W. 130 (Mo.).—*Held,* that a foreman in charge of a crew of miners is not a fellow servant with the men while taking part in their work, so as to relieve the master from the liability of his negligence in doing the work.

In an Indiana case where the circumstances were very similar to those in the principal case, the court held that the negligence was that of a fellow servant. *Stone Co. v. Chastain,* 9 Ind. App. 453. And this is in harmony with the accepted doctrine that the employer is not liable to the employe for the negligence of a superintendent in doing the work of a co-employe, the liability arising only where such negligence occurs in the exercise of superintendence. *Quinn v. Lighterage Co.,* 23 Fed. 363; *Crispin v. Babbitt,* 81 N. Y. 516; *Hontford v. Railroad Co.,* 91 Wis. 374; *Legrone v. Railroad Co.,* 67 Miss. 592. In England it is provided under the Employers' Liability Act of 1880 that where a workman is injured through the negligent act of a superintendent, damages may be recovered from the employer in those cases only where it is shown that the negligence occurred in the exercise of superintendence. Similar statutes have been enacted in several of the States in this country. But decisions consonant with that in the principal case and against the weight of authority have been rendered in *Shumway v. Manufacturing Co.,* 98 Mich. 411; *Sweeney v. Railroad Co.,* 84 Tex. 433.

MUNCIPAL CORPORATIONS—DEFECTIVE SIDEWALK—NOTICE.—MCMANUS V. CITY OF WATERTOWN, 84 N. Y. SUPP. 638.—A municipal charter required actual notice of defects in the sidewalk as a pre-requisite to an action for

injuries caused thereby. *Held,* that evidence showing that an officer to whom notice would be sufficient had passed the place several days before the accident occurred was not sufficient to warrant a finding by the jury of actual notice. Williams, J., *dissenting.*

This case follows the decision in *Smith v. Rochester,* 79 Hun. 174. But it is difficult to harmonize these cases with the decisions on what constitutes actual notice. The term "actual notice" is sometimes used in the broad sense of constructive notice. *Am. & Eng. Enc. Law,* Vol. 21, p. 582. By the weight of authority the requirement of actual notice is satisfied whenever the authorities by reasonable diligence might have had knowledge. *McVee v. Watertown,* 92 Hun. 310; *Lyman v. Green Bay,* 91 Wis. 488. Some courts lay down broadly the principle that constructive notice, where the facts are uncontroverted, is for the court. *Birdsall v. Russell,* 29 N. Y. 249; *Claflin v. Lenheim,* 66 N. Y. 306. But the application of this principle to municipal corporations is opposed to the weight of authority. *Todd v. Troy,* 61 N. Y. 510; *Decatur v. Bestin,* 169 Ill. 340.

MUNICIPAL CORPORATION—INJUNCTION—PRIVATE PARTY AS PLAINTIFF.—AMUSEMENT CO. V. CITY, 74 PAC. 606 (KAS.).—The owner of a theatre sought to restrain city officers from allowing the use of public buildings for lectures and entertainments for private profit. *Held,* that his damages differing only in degree from those sustained by the general public, the action could not be maintained.

Before a person can maintain an action of this kind, he must show some interest peculiar to himself. *Mikesell v. Durkee,* 34 Kas. 509; *Davis v. New York,* 9 N. Y. Supp. Ct. 663. But in the application of this well settled principle there is considerable conflict. It has repeatedly been held that where a schoolhouse is used for religious meetings and entertainments an injunction will be granted against such use on the application of a taxpayer where his property, books and pencils were injured by such use. *School Dist. v. Wood,* 13 Mass. 193; *School Dist. v. Arnold,* 21 Wis. 657; *Spencer v. School Dist.,* 15 Kas. 259. In a few cases it has been held that such use of a schoolhouse might be enjoined at the instance of a taxpayer whose only damage consisted in the illegal use of the building. *Scofield v. School Dist.,* 27 Conn. 499, and cases therein cited. The facts in the principal case show a loss of profit upon the part of the theatre owner which, on its face, is a damage, different in kind as well as in degree from that suffered by the general public, and the decision thus seems contrary to the settled weight of authority.

MUNICIPAL CORPORATIONS—PURCHASE—INCUMBRANCES.—STATE V. TOPEKA, 74 PAC. 647 (KAS.).—*Held,* that the city may purchase a system of waterworks subject to an incumbrance.

The precise question in the principal case is presented for the first time. Though a municipal corporation may acquire property; *Windham v. Portland,* 4 Mass. 384; and has the right to secure the purchase price by giving a mortgage; *Eddy v. City,* 26 La. Ann. 636; it is well settled that a city cannot dispose of property of a public nature in violation of the trusts upon which it is held. *Dillon, Mun. Corps.,* sec. 575; *Meriwether v. Garret,* 102 U. S. 472. Waterworks owned by a city are deemed to be held in trust; *New Orleans*